

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

INNER-TITE CORP.,

Plaintiff

v.

DEWALCH TECHNOLOGIES, INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 04-402019 FDS

**DEWALCH TECHNOLOGIES RULE 56(F) MOTION IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF PATENT
CLAIM CONSTRUCTION, AND REQUEST FOR A MARKMAN HEARING**

Defendant DeWalch Technologies, Inc. ("DeWalch") submits this Rule 56(f) Motion in Opposition to Plaintiff's Motion for Partial Summary Judgment of Patent Claim Construction and Request for a Markman Hearing.

In support of this Motion in Opposition and Request, DeWalch also submits herewith its Memorandum in Support of its Rule 56(f) Motion in Opposition to Plaintiff's Motion for Partial Summary Judgment of Patent Claim Construction and Request for a Markman Hearing. In addition, DeWalch submits the Declaration of John Edmonds.

As set forth in DeWalch's Memorandum, as contemplated by Rule 56(f) of the Federal Rules of Civil Procedure, the Court should either deny Plaintiff's Motion as premature or defer any consideration of the Motion until DeWalch has had an adequate time for discovery. At a minimum, DeWalch requests that the Court defer ruling on the Motion until after the Court has construed the claims-in-suit pursuant to *Markman v. Westview Instruments, Inc.*

In the alternative, if this Rule 56(f) Motion is denied, DeWalch requests, at a minimum, to be afforded the opportunity to respond to Plaintiff's Motion for Partial Summary Judgment within a time frame set by the Court.

Respectfully submitted,

DEWALCH TECHNOLOGIES, INC.
By its attorney,

/s/ Denise W. DeFranco
Denise W. DeFranco
BBO 558859
FOLEY HOAG LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600
617.832.1202 Telephone
617.832.7000 Facsimile

OF COUNSEL:

Peter E. Mims
Texas Bar No. 14173275
John J. Edmonds
Texas Bar No. 00789758
David K. Wooten
Texas Bar No. 24033477
VINSON & ELKINS, L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, TX 77002-6760
Phone: 713-758-2732
Facsimile: 713-615-5703

ATTORNEYS FOR DEFENDANT
DEWALCH TECHNOLOGIES, INC.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1, the undersigned certifies that counsel for Defendant conferred with counsel for Plaintiff, with respect to the issues raised in this motion and were unable to reach agreement regarding the same.

/s/ Denise W. DeFranco

Denise W. DeFranco

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document has been served upon the attorney of record for each other party by first class mail, postage prepaid, on February 22, 2005.

Mr. Maurice E. Gauthier
Gauthier & Connors LLP
225 Franklin Street, Suite 3300
Boston, Massachusetts 02110

/s/ Denise W. DeFranco

Denise W. DeFranco